

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BYRON STAFFORD,	§
	§ No. 597, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0711010737
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 1, 2010

Decided: January 10, 2011

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 10th day of January 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Byron Stafford, filed an appeal from the Superior Court’s September 10, 2010 violation of probation (“VOP”) sentencing order.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

¹ Stafford originally was sentenced on September 8, 2010. The sentencing order was modified on September 10, 2010 to add an explanatory note. The sentence itself was not changed.

the face of the opening brief that the appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, on February 28, 2008, Stafford pleaded guilty to Distribution of a Controlled Substance Within 300 Feet of a Park. He was sentenced to 3 years incarceration at Level V, to be suspended for 18 months of Level II probation. On October 30, 2008, Stafford was found to have committed a VOP. His case was consolidated with Court of Common Pleas Case Number 0706014498. His probation was revoked and he was re-sentenced to 3 years of Level V incarceration, to be suspended after 30 days for 18 months at Level III probation, in turn to be suspended after 6 months at Level III, with the balance of the sentence to be served at Level II probation.

(3) Stafford subsequently was charged with another VOP. On May 13, 2010, the VOP proceeding was moved to the fast track calendar for scheduling with an additional charge pending against Stafford in Superior Court Criminal Identification Number 0909006979.³ On June 9, 2010, a VOP hearing was held and, once again, Stafford was found to have committed a VOP. His probation was revoked and he was re-sentenced to 2

² Supr. Ct. R. 25(a).

³ The record before us reflects that the charge was Possession of a Firearm By a Person Prohibited.

years and 11 months of Level V incarceration, with credit for 129 days previously served, to be followed by 6 months of Level II probation.

(4) Stafford filed an appeal in this Court. By Order dated August 13, 2010, this Court remanded the matter to the Superior Court for re-sentencing in order to permit Stafford to file a timely appeal from his VOP sentence. Stafford was re-sentenced on September 8, 2010 to the same sentence that had been imposed on June 9, 2010. On September 10, 2010, the Superior Court filed a modified sentencing order reflecting that Stafford's June 9, 2010 sentence had been vacated. The sentence itself was not changed.

(5) In his appeal, Stafford claims that a) the Superior Court's VOP sentence was excessive and improperly based on his weapon offense rather than the technical violations of "picking up traffic offenses and failing to report these offenses, as well as failure to report to scheduled visits"; and b) his attorney provided ineffective assistance at the VOP hearing by failing to object to the probation officer's testimony.

(6) Even as a *pro se* appellant, Stafford has the responsibility to provide any transcripts relevant to his claims on appeal.⁴ While Stafford states in his opening brief that the transcript of the September 8, 2010 VOP

⁴ Supr. Ct. R. 9(e)(ii) and 14(e); *Tricoche v. State*, 535 A.2d 151, 154 (Del. 1987).

hearing provides the factual support for his first claim of an improper sentence, he does not provide this Court with a copy of that transcript. The docket reflects that Stafford designated the transcript in his notice of appeal and that the Clerk of the Court directed him to either request a copy of the transcript at State expense or make arrangements for payment to the court reporter no later than October 8, 2010, but that Stafford took no action to obtain the transcript. Stafford's failure to provide the transcript precludes our appellate review of his claim of an improper sentence.⁵

(7) As for Stafford's second claim of ineffective assistance of counsel, this Court will not consider a such a claim for the first time on direct appeal.⁶ Because the record before us does not reflect that the claim was raised and fully considered below, we decline to address it in this proceeding.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁵ Id.

⁶ *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁷

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ Stafford's December 13, 2010 motion to respond to the State's motion to affirm is hereby denied as moot. Nothing argued in the motion would alter the outcome of this proceeding in any case.